

23.906 Requirements.

(a) E.O. 12969 requires that solicitations for competitive contracts expected to exceed \$100,000 (including all options) include, to the maximum extent practicable, as an award eligibility criterion, a certification by the offeror that, if awarded a contract, either—

(1) As the owner or operator of facilities to be used in the performance of the contract that are subject to Form R filing and reporting requirements, the offeror will file, and will continue to file throughout the life of the contract, for such facilities, the Toxic Chemical Release Inventory Form (Form R) as described in EPCRA sections 313 (a) and (g) and PPA section 6607; or—

(2) Facilities to be used in the performance of the contract are exempt from Form R filing and reporting requirements because the facilities—

(i) Do not manufacture, process, or otherwise use any toxic chemicals listed under section 313(c) of EPCRA, 42 U.S.C. 11023(c);—

(ii) Do not have 10 or more full-time employees as specified in section 313(b)(1)(A) of EPCRA, 42 U.S.C. 11023(b)(1)(A);—

(iii) Do not meet the reporting thresholds of toxic chemicals established under section 313(f) of EPCRA, 42 U.S.C. 11023(f) (including the alternate thresholds at 40 CFR 372.27, provided an appropriate certification form has been filed with EPA);—

(iv) Do not fall within Standard Industrial Classification Code (SIC) major groups 20 through 39 or their corresponding North American Industry Classification System (NAICS) sectors 31 through 33; or

(v) Are not located within any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Northern Mariana Islands, or any other territory or possession over which the United States has jurisdiction.—

(b) A determination that it is not practicable to include the solicitation provision at 52.223-13, Certification of Toxic Chemical Release Reporting, in a solicitation or class of solicitations shall be approved by a procurement of-

ficial at a level no lower than the head of the contracting activity. Prior to making such a determination for a solicitation or class of solicitations with an estimated value in excess of \$500,000 (including all options), the agency shall consult with the Environmental Protection Agency, Director, Environmental Assistance Division, Office of Pollution Prevention and Toxic Substances (Mail Code 7408), Washington, DC 20460.—

(c) Award shall not be made to offerors who do not certify in accordance with paragraph (a) of this section when the provision at 52.223-13, Certification of Toxic Chemical Release Reporting, is included in the solicitation. If facilities to be used by the offeror in the performance of the contract are not subject to Form R filing and reporting requirements and the offeror fails to check the appropriate box(es) in 52.223-13, Certification of Toxic Chemical Release Reporting, such failure shall be considered a minor informality or irregularity.

(d) The contracting officer shall cooperate with EPA representatives and provide such advice and assistance as may be required to aid EPA in the performance of its responsibilities under E.O. 12969.

(e) EPA, upon determining that a contractor is not filing the necessary forms or is filing incomplete information, may recommend to the head of the contracting activity that the contract be terminated for convenience. The head of the contracting activity shall consider the EPA recommendation and determine if termination or some other action is appropriate.

[60 FR 55307, Oct. 30, 1995, as amended at 61 FR 41474, Aug. 8, 1996; 65 FR 46058, July 26, 2000]

23.907 Solicitation provision and contract clause.

Except for acquisitions of commercial items as defined in part 2, the contracting officer shall—

(a) Insert the provision at 52.223-13, Certification of Toxic Chemical Release Reporting, in all solicitations for competitive contracts expected to exceed \$100,000 (including all options) and competitive 8(a) contracts, unless it has been determined in accordance

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with 23.906(b) that to do so is not practicable; and

(b) When the solicitation contains the provision at 52.223-13, Certification of Toxic Chemical Release Reporting, insert the clause at 52.223-14, Toxic Chemical Release Reporting, in the resulting contract, if the contract is expected to exceed \$100,000 (including all options).

[60 FR 55307, Oct. 30, 1995, as amended at 61 FR 41474, Aug. 8, 1996]

Subpart 23.10—Federal Compliance With Right-To-Know Laws and Pollution Prevention Requirements

SOURCE: 62 FR 12697, Mar. 17, 1997, unless otherwise noted.

23.1001 Purpose.

This subpart implements requirements of Executive Order (E.O.) 12856 of August 3, 1993, Federal Compliance with Right-To-Know Laws and Pollution Prevention Requirements.

23.1002 Applicability.

The requirements of this subpart apply to facilities owned or operated by a Federal agency except those facilities located outside the several states of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

23.1003 Definition.

Federal agency, as used in this subpart, means an executive agency (see 2.101).

23.1004 Requirements.

(a) E.O. 12856 requires Federal facilities to comply with the provisions of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA)(42 U.S.C. 11001-11050) and the Pollution Prevention Act of 1990 (PPA)(42 U.S.C. 13101-13109).

(b) Pursuant to Section 1-104 of E.O. 12856, and any agency implementing procedures, every new contract that provides for performance on a Federal facility shall require the contractor to provide information necessary for the Federal agency to comply with the emergency planning and toxic release

reporting requirements of EPCRA and PPA, and other agency obligations under E.O. 12856.

[62 FR 12697, Mar. 17, 1997, as amended at 63 FR 9051, Feb. 23, 1998]

23.1005 Contract clause.

The contracting officer shall insert the clause at 52.223-5, Pollution Prevention and Right-to-Know Information, in all solicitations and contracts that provide for performance, in whole or in part, on a Federal facility.

PART 24—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

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AUTHORITY: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

SOURCE: 48 FR 42277, Sept. 19, 1983, unless otherwise noted.

24.000 Scope of part.

This part prescribes policies and procedures that apply requirements of the Privacy Act of 1974 (5 U.S.C. 552a) (the Act) and OMB Circular No. A-130, December 12, 1985, to Government contracts and cites the Freedom of Information Act (5 U.S.C. 552, as amended.)

[48 FR 42277, Sept. 19, 1983, as amended at 55 FR 38517, Sept. 18, 1990]

Subpart 24.1—Protection of Individual Privacy

24.101 Definitions.

As used in this subpart—